

*United States Court of Appeals
for the Second Circuit*



**APPELLANT'S
BRIEF &
APPENDIX**

75-1025

B

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

no Service

7cc

LARRY WILLIAMSON,

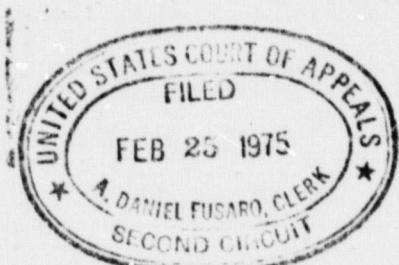
Defendant-Appellant

-against-

Docket No.
75-1025

UNITED STATES OF AMERICA

o APPENDIX
BRIEF FOR DEFENDANT-APPELLANT



STUART R. SHAW, ESQ.
600 Madison Avenue
New York, New York 10022
(212) 755-5645

PAGINATION AS IN ORIGINAL COPY

UNITED STATES COURT OF APPEALS

FOR THE SECOND CIRCUIT

LARRY WILLIAMSON,

Defendant-Appellant

-against-

UNITED STATES OF AMERICA

BRIEF FOR APPELLANT

STUART R. SHAW, ESQ.
600 Madison Avenue
New York, New York 10022
(212) 755-5645

TABLE OF CONTENTS

	<u>Page</u>
TABLE OF CASES AND OTHER AUTHORITIES	i
ISSUES TO BE PRESENTED	1
INTRODUCTION	2
STATEMENT OF FACTS	
A. DEFENDANT'S CASE	3
B. PROSECUTION'S CASE	4
ARGUMENT	
POINT I	
THE TRIAL JUDGE SERIOUSLY ERRED AND PREJUDICED MR. WILLIAMSON'S CASE WHEN HE RULED THAT BEFORE GRAND JURY MINUTES COULD BE UTILIZED BY DEFENSE COUNSEL TO IMPEACH A PROSECUTION WITNESS, SUCH MINUTES MUST FIRST BE INTRODUCED INTO EVIDENCE BY DEFENSE COUNSEL	11
POINT II	
THE PROSECUTION SEVERELY PREJUDICED MR. WILLIAMSON'S CASE BY ATTACKING HIS CHARACTER, ALTHOUGH MR. WILLIAMSON'S CHARACTER WAS NOT IN ISSUE AS HE DID NOT TESTIFY IN HIS OWN BEHALF	15
POINT III	
THE CONDUCT OF THE TRIAL JUDGE, PARTICULARLY, IN EFFECTIVELY ACTING IN THE ROLE OF PROSECUTOR AT CRUCIAL TIMES, INTERFERING WITH CROSS-EXAMINATION BY DEFENSE COUNSEL, AND EXPRESSIN A HOSTILE ATTITUDE TOWARDS DEFENSE COUNSEL, DEPRIVED MR. WILLIAMSON OF HIS CONSTITUTIONAL RIGHT OF A FAIR TRIAL AND ADEQUATE REPRESENTATION OF COUNSEL IN HIS BEHALF	20
CONCLUSION	25

Continued

TABLE OF CONTENTS (Continued)

	<u>Page</u>
ADDENDUM TO POINT III	26
APPENDIX (Lettered A through Q).....	31

TABLE OF CASES AND OTHER AUTHORITIES

Cases Cited

<u>Dennis v. United States</u> , 384 U.S. 855 (1966)	13
<u>Glasser v. United States</u> , 315 U.S. 60 (1942).....	21
<u>Michelson v. United States</u> , 355 U.S. 469 (1948).....	18
<u>Pariser v. City of New York</u> , 146 F.2d 431 (2nd Cir., 1973)...	20
<u>Starr v. United States</u> , 153 U.S. 614 (1894)	21
<u>The Queen's Case</u> , 2 Brod. & B. 284 (1820)	12, 13
<u>United States v. Ah Kee Eng</u> , 241 F.2d 157 (2nd Cir., 1957)...	24
<u>United States v. Bernstein</u> , 417 F.2d 641 (2nd Cir., 1969)...	12
<u>United States v. Boatner</u> , 478 F.2d 737, 741-742 (2nd Cir., 1973)	24
<u>United States v. Cruz</u> , 455 F.2d 184, 185 (2nd Cir., 1972) cert. denied, 406 U.S. 918 (1972) ...	24
<u>United States v. DeCicco</u> , 435 F.2d 478 (2nd Cir., 1945)....	19
<u>United States v. Dellinger</u> , 472 F.2d 340, 385-391 (7th Cir., 1972) cert. denied, 410 U.S. 970 (1973).....	14
<u>United States v. Dilliard</u> , 101 F.2d 829 (2nd Cir., 1938)...	12
<u>United States v. Gublielmini</u> , 384 F.2d 602 (2nd Cir., 1967)	24
<u>United States v. James</u> , 208 F.2d 124 (2nd Cir., 1953).....	18
<u>United States v. Nazzaro</u> , 472 F.2d 302 (2nd Cir., 1973)....	22
<u>United States v. Persico</u> , 305 F.2d 534 (2nd Cir., 1962)	22
<u>United States v. Weiss</u> , 491 F.2d 460, 469 (2nd Cir. 1974) ..	23

Other Authorities

1 Wigmore §57 (3rd Edition 1940)	18
4 Wigmore §1185(5), Chadbourne rev., 1972.....	12,13
4 Wigmore §1259, Chadbourne rev., 1972.....	12

Other Authorities (continued)

4 Wigmore §1263, Chabourne rev., 1972	13
Rule 613, Proposed Federal Rules of Evidence.....	13
Rule 613, Advisory Committee Note, Subdivision A.....	13

ISSUES TO BE PRESENTED

1. WAS IT REVERSIBLE ERROR FOR THE TRIAL COURT TO RULE THAT BEFORE GRAND JURY MINUTES COULD BE USED TO IMPEACH A PROSECUTION WITNESS, SUCH MINUTES MUST FIRST BE INTRODUCED INTO EVIDENCE BY DEFENSE COUNSEL?
2. WAS IT REVERSIBLE ERROR FOR THE PROSECUTION TO PREDJUDICE MR. WILLIAMSON'S CASE BY ATTACKING HIS CHARACTER BEFORE THE JURY, ALTHOUGH MR. WILLIAMSON NEVER TESTIFIED IN HIS OWN BEHALF?
3. WAS THEIR SUCH MISCONDUCT ON THE PART OF THE TRIAL JUDGE NECESSITATING A FINDING OF REVERSIBLE ERROR, IN THE LIGHT OF THE FACT THAT HE ASSUMED THE ROLE OF PROSECUTOR AT CRUCIAL TIMES, THAT HE INTERFERED WITH CROSS-EXAMINATION BY DEFENSE COUNSEL, AND EXPRESSED A NEGATIVE AND HOSTILE ATTITUDE TOWARDS DEFENSE COUNSEL?

INTRODUCTION

Appellant, Larry Williamson, was indicted for conspiracy to violate Title 18 U.S.C. §1078 and Title 18 U.S.C §2114 (Count I). He was also indicted for the following acts: that the appellant robbed the Boulevard Postal Station in violation of Title 18 U.S.C. §2114 and 2 (Count II); that the appellant placed the lives of postal service employees in jeopardy by the use of dangerous weapons in violation of Title 18 U.S.C. §2114 and 2 (Count III); that the appellant stole four mail bags from the Boulevard Postal Station in violation of Title 18 U.S.C. §1078 and 2 (Count IV).

The trial commenced on November 11, 1974 in the Southern District of New York before the Honorable Judge Irving Ben Cooper. The Defendant-Appellant was found guilty on all four counts by the jury on November 15, 1974 after approximately 26 hours of eliberation by the jury.

On December 19, 1974, Mr. Williamson was sentenced to the statutory maximum, or a total of 35 years (Trial Transcript page 671, hereinafter referred to as T- followed by the page number), by the Honorable Judge Irving Ben Cooper.

This appeal is from the judgement of the Federal District Court, Southern District of New York.

STATEMENT OF FACTS

A. Defendant's Case

Victoria Taylor is a bonded bank teller (T-443). She testified that she has known Mr. Williamson for 15 years, and his wife for about 10 years (T-445). Miss Taylor told the Court that on June 16, 1972 (T-453), she visited the Williamsons at approximately 5:30 P.M., after leaving her job as bank teller, and stayed until about 1 A.M. (T-447, 448, 449). Miss Taylor stated that Mr. Williamson was in the apartment when she arrived, and he stayed until he was picked up by Arthur Campbell later in the evening (T-449). It was also stated that Miss Taylor flew to Florida on June 17, 1972 with Mrs. Williamson, and flew back with Mr. and Mrs. Williamson on Sunday, June 19, 1972 (T-452). Miss Taylor testified she was certain of the above fact because she had never flown in a plane before nor had she been to Florida before June 17, 1972, and that the tickets shown to her (Defendant's Exhibit C) refreshed her recollection of the exact date (T-453).

Martin Schrager handles the employees' accounts for the postal service (T-490). Referring to his official records, he testified that Mr. Williamson left his job with the post office on March 24, 1972 (T-491), and that he started the job on July 27, 1968 (T-492). It was stated that during this time, Mr. Williamson accumulated approximately \$2,000 in a pension fund, which was paid to him approximately eight weeks after he stopped working at the post office (T-493), approximately three weeks prior to the crime.

B. Prosecution's Case

Douglas Simon testified that he met Arthur Campbell, Larry Williamson, and Bruce Leathers in a car in the Bronx in the late afternoon of June 16, 1972 (T-3). At this meeting, plans were discussed to rob the Boulevard Post Office, Bronx, New York. Mr. Simon stated that money was expected to be in locked bags in a post office truck (T-6). While he was in the car, he reached under the front seat and picked up a pistol (T-8, 9). He further stated that Bruce Leathers carried an automatic revolver at this time (T-9, 10).

Mr. Simon testified that Bruce Leathers and Simon left the car and walked up the ramp behind the post office where the trucks were. He was confronted by a security guard and truck driver. Mr. Simon stated that he disarmed the security guard (T-11). After the truck was opened, Bruce Leathers came in behind him with two other men, one of whom was bleeding slightly from a superficial wound on the side of his head (T-13). Mr. Simon testified that he and Leathers took two mail bags, locked the postal service employees inside, and walked away (T-14).

Simon further stated that he was picked up by car, and went with his companions to an apartment on 174th Street (T-20). The mail bags were opened in this apartment, disclosing \$10,000 to \$12,000 which was split evenly (T-21). After the split, Simon left the apartment (T-22).

Douglas Simon admitted to convictions of possession of a weapon as a misdemeanor, possession of a weapon as a felony, robbery in the first degree, grand larceny in the second degree,

and two other possession of weapons convictions (T-48). At the time of his testimony, he was serving 6 to 18 years in the State Penitentiary, and was awaiting sentencing for his participation in the post office robbery in the instant case (T-48, 49).

Robert Watts is an intermediate school teacher who owns a home in Ridgewood, New Jersey (T-172) and owns a late model Cadillac (T-235). He testified that he was well acquainted with Bruce Leathers, Douglas Simon, Arthur Campbell, and Larry Williamson (T-126). He also told the Court that these men were all friends of his brother-in-law, Fred Howe (T-126).

Mr. Watts testified that he participated in a conversation with Arthur Campbell, Larry Williamson, and Fred Howe at a social club in the Bronx in early June or late May, 1972 (T-127). He stated that Larry Williamson and Arthur Campbell discussed the routes of mail trucks at this conversation (T-128). It was specifically mentioned that the most money was expected to be in the truck on a Friday (T-129).

Mr. Watts testified that on the day of the crime, June 16, 1972, he drove from Manhattan to a shopping center in the Bronx to cash his paycheck (T-130, 131, 174, 176). He saw Larry Williamson and his wife, Arthur Campbell, Bruce Leathers, and Douglas Simon at this shopping center (T-130, 131). Mr. Watts testified that Arthur Campbell walked over to him and mentioned that "they were going to go and pull the thing he had spoken about earlier" (T-131).

Watts further testified that later that day he drove to Arthur Campbell's house in Pamona, New York, was shown a lot

of money, and agreed to drive Mr. Campbell to the airport (T-135). On the way to the airport, Mr. Watts stated that he stopped in the Bronx to pick up Larry Williamson, Larry's girlfriend, and Arthur Campbell's girlfriend (T-136, 138). Watts also testified that at the airport, Larry Williamson and Arthur Campbell bought tickets to Miami under an assumed name (T-140).

Mr. Watts testified to overhearing another conversation where Larry Williamson and Arthur Campbell discussed how they waited in the car while Bruce Leathers and Douglas Simon robbed the post office (T-141).

Mr. Watts also stated that he leased an apartment he permitted Fred Howe, an acknowledged "junkie" and Mr. Watts' brother-in-law, and Arthur Campbell to live (T-142, 143). On or about September 1, 1972, Watts stated that he found a mail bag in the apartment and told Fred Howe to get rid of it (T-143).

Fred Howe, a reformed addict and previously convicted felon (T-253), testified that he knew Larry Williamson, Bruce Leathers, Arthur Campbell, and Douglas Simon. He also stated that he overheard a conversation between Arthur Campbell and Larry Williamson that took place in his apartment (T-246). Mr. Howe stated that during this conversation, Arthur Campbell teased Larry Williamson about being nervous in the alleged getaway car after the robbery (T-249).

Mr. Howe stated that he found mail bags in his apartment in July, 1972 (T-250, 251). He testified to have placed the mail bags in pillow cases. The pillow cases were then put in green plastic garbage bags and thrown in the dumpster on Clason Point Lane (T-252). Mr. Howe admitted to being

convicted for bail jumping, armed robbery, and being a former user of narcotics (T-253).

Claudio Sampognaro, a letter carrier for the postal service, testified that he received a torn mail bag from a sanitation man on or about July 20, 1972, and gave it to his supervisor (T-286).

John D. Redmond, a sanitation worker (T-289), testified that he found a mail bag near the Clason Point Housing Project in the Bronx in a big, steel garbage bucket and gave it to Mr. Sampognaro (T-290, 291).

Mark Angioli, manager of the Boulevard Post Office (T-295), testified to receiving a mail bag from Mr. Sampognaro (T-296).

Louis J. Olivero, Equal Employment Opportunity Specialist for the postal service (T-302), described the route of the circuit wagon (mail truck that carried money) (T-303, 304). Olivero identified Mr. Williamson as a former employee of the Boulevard Post Office (T-305). He stated that Mr. Williamson was appointed as a sub-city carrier on July 27, 1968 and his employment terminated in March, 1972 (T-311). Mr. Olivero also testified that appellant had the opportunity to observe the circuit wagon (T-312).

Richard Kacsmarik, a veteran ticket agent for Eastern Airlines (T-323), described the airline tickets that were in evidence and interpreted abbreviations on the tickets (T-324, 325, 326). Kacsmarik testified that a round-trip ticket to Miami was originally purchased from National Airlines on

June 16, 1972 and the return trip was changed and purchased from Eastern Airlines on June 19, 1972 (T-326, 327). He also testified on cross-examination that names on a ticket may not be altered after they are purchased, even if a different airline is contracted with for a return trip on a round-trip ticket (T-329).

Charles Horn is the Supervisor of Window Service at the Crotona Park Post Office (T-340). Mr. Horn testified that on June 16, 1972, \$2,393 in cash and a check deposit for \$1,201.47 was placed in the registry pouch and put on the circuit wagon. He also testified that the truck was then scheduled to go to West Farms Post Office (T-347, 348).

Moses Rubin was Foreman of Window Services at West Farms Post Office in June, 1972 (T-354). He testified that on June 16, 1972, \$1,733 in cash, \$2,302.62 in checks and money orders, \$12.93 in postage due form and \$226.65 in C.O.D. vouchers were placed on the circuit wagon (T-361).

Frank J. Grispi was Superintendent of Longwood Postal Station in June, 1972 (T-373). He testified to placing \$3,323 in cash and \$1,343.40 in checks on the circuit wagon on June 16, 1972 (T-376).

Harry Gersten retired from the postal service as Foreman of Mails of the Boulevard Post Office (T-380, 381). Gersten stated that he was on the loading platform when the robbery occurred (T-381). On June 16, 1972, at approximately 6:15 P.M., two men came onto the platform and asked for an employee named King (T-382). Mr. Gersten testified that seconds later one of the men pointed a gun at him, disarmed the postal

dispatcher, and demanded the money. The truck was opened, Mr. Gersten and three other employees were herded into the truck and the thieves fled with the two bags (T-382, 383, 389). Mr. Gersten testified that the custodian was bleeding from the head (T-383). Gersten testified that he banged on the truck door until someone opened the door and he then called the police (T-384). He also stated that he put \$4,487 on the truck before the robbery (T-393). Mr. Gersten did not testify that Larry Williamson was present during the above events or was one of the perpetrators of the indicted offenses (T-395, 396).

Juan Santos Gonzalez was a dispatcher at the Boulevard Post Office in June, 1972 (T-398). He testified that a man came onto the platform and asked for King (T-399). In a few seconds, the man pulled out a gun, took his gun and the key to the truck (T-399). Mr. Gonzalez also saw the custodian, Mr. Sanchez, bleeding from the head (T-399). The robbers took the money bags from the truck and locked the postal employees inside (T-399). Gonzalez did not testify that Williamson was one of the perpetrators (T-402).

Walter J. Johnson was the circuit wagon driver in June, 1972 (T-407, 408). On June 16, 1972, he arrived at the Boulevard Station after making pick-ups at the other post offices on the route (T-410). He testified that he was on the platform with three other employees when two armed men approached, ordered the truck opened, picked up the two money bags, and locked the postal employees inside the truck (T-411). He also observed Mr. Sanchez being struck on the head (T-411). Johnson did not identify Williamson as one of the perpetrators (T-415, 416).

James R. King, a clerk at the Boulevard Post Office, testified that he knew Larry Williamson when he worked at the post office (T-420, 421).

Elidio Sanchez was the custodian at the Boulevard Post Office in June, 1972 (T-426). At the time of the robbery, Mr. Sanchez testified that he was confronted by one of the perpetrators and was hit on the right side of his skull with a gun (T-427). He was then pushed in the truck with four other postal employees (T-427). Sanchez did not testify that Williamson struck him (T-431, 432).

POINT I

THE TRIAL JUDGE SERIOUSLY ERRED
AND PREDJUDICED MR. WILLIAMSON'S
CASE WHEN HE RULED THAT BEFORE
GRAND JURY MINUTES COULD BE
UTILIZED TO IMPEACH A PROSECUTION
WITNESS, SUCH MINUTES MUST FIRST
BE INTRODUCED INTO EVIDENCE BY
DEFENSE COUNSEL.

Defense Counsel attempted to challenge the credibility of prosecution witness, Douglas Simon, by referring to prior inconsistent statements made by Mr. Simon before the Grand Jury (T-113). The Court ruled that this would not be allowed unless the document (here a transcript) being utilized to impeach the witness' credibility was offered into evidence (T-114):

Q. Do you recall testifying in front of a Grand Jury on the 7th day of November, 1973, two days after you made a sworn statement, in this courthouse?

A. Yes.

Q. Do you recall being asked the question on page seven --

MR. BUSH: I am going to object unless it is in evidence again.

THE COURT: Certainly. Objection sustained.

MR. SHAW: Your Honor, could we have a side bar?

THE COURT: All right

(At the side bar)

MR. SHAW: Your Honor, I have never heard of any judge telling me that I had to put in evidence a document containing prior inconsistent statements --

THE COURT: I am saying it to you. And if I am wrong the record shows what I did.

MR. SHAW: Your Honor, I would most respectfully except. I don't think there is any necessity of putting this in evidence.

(T-113 to 114)

The trial judge's ruling on this issue apparently attempted to extend the no longer followed proposition of law of The Queen's Case, 2 Brod. and B. 284 (1820). Said case supports the doctrine that:

When a witness is to be asked on cross-examination as to the terms of a document written or signed by him, the document must be at the time produced and shown or read aloud to him before he can be asked as to its contents ...

4 Wigmore §1259 and §1185 (5a)
(Chadbourn Revision, 1972)

This Queen's Case doctrine was superceded in United States v. Dilliard, 101 F.2d 829 (2nd Cir., 1938). The prosecution in Dilliard cross-examined the defendant about a letter that was not shown to him. The Court, per Learned Hand, did not attach error to this practice, but stated that the rule of The Queen's Case, supra, ... "is everywhere more honored in the breach than in the observance." United States v. Dilliard, supra, at 837. Judge Learned Hand further stated that the only requirement in such a situation is "fairness", which is satisfied by telling the witness when and where the statement was made. Id., Accord, United States v. Bernstein, 417 F.2d 641, 644 (2nd Cir., 1969). Appellant submits that Defense Counsel properly satisfied the requirement of requisite fairness when Mr. Simon

was asked, "Do you recall testifying in front of a Grand Jury on the 7th day of November, 1973 ...?" (T-113).

The rule of The Queen's Case, supra, has been criticized vehemently, especially when it is enforced to preclude and prevent attorney's attempts to attack a witness through cross-examination referring to prior inconsistent statements.

4 Wigmore §1263 (Chadbourn rev., 1972) Rule 613 of the proposed Federal Rules of Evidence abolishes "this useless impediment to cross-examination." Rule 613, Advisory Committee Note, subdivision (a).

In the case at bar, the fact that Grand Jury minutes were referred to, as opposed to other types of documents, should be of no consequence. Defendants may have access to Grand Jury minutes for the purpose of pointing out inconsistencies with trial testimony. Dennis v. United States, 384 U.S. 855, (1966).

Appellant assents that the trial judge thwarted cross-examination of the prosecution's main witness, and irreparably prejudiced Mr. Williamson's case, by requiring that the document (here Grand Jury minutes), be placed into evidence by Defense Counsel before Counsel could attempt to utilize said document to impeach "...The most important single witness called to the stand was the witness Simon, ..." (T-615, Judge Cooper's charge to the jury).

Said action was contrary to the rules of evidence:

The production (of a document) is not for the benefit of a witness; hence the document need not be perused by a witness or shown to him ..."

4 Wigmore §1185 (5)

The aforementioned evidentiary ruling of the Court hampered Counsel's attempts at cross-examination throughout the trial. This was particularly so in regard to Exhibit E for identification (3504-C), Mr. Watts' Grand Jury testimony (T-230, line 10 - T-233, line 11).

POINT II

THE PROSECUTION SEVERLY PREJUDICED DEFENDANT'S, MR. WILLIAMSON'S, CASE BY ATTACKING HIS CHARACTER BEFORE THE JURY. THIS WAS DONE DESPITE THE FACT THAT WILLIAMSON'S CHARACTER WAS NEVER PLACED IN ISSUE. THE DEFENDANT EXERCISED HIS CONSTITUTIONAL RIGHT TO NOT TAKE THE STAND AND TESTIFY IN HIS OWN BEHALF.

On two separate occasions during his summation, the prosecutor argued to the jury that Mr. Williamson was fired from the post office over Defense Counsel's objections (T-553). The appellant never put his character at issue in this case because he never took the stand pursuant to his 5th Amendment rights. The prosecutor erred in bringing up Mr. Williamson's character when he maintained that:

Without any doubt whatsoever one of the robbers had to be either then be working for the post office or in the last six months or so have quit or been fired by the post office.

(T-549) (Emphasis added)

and again:

Out of how many people in New York City, how many worked or had stopped working at this postal station? How many had been recently discharged?

MR. SHAW: Objection, Your Honor

THE COURT: Objection overruled

(T-549-550) (Emphasis added)

A careful reading of the transcript reveals that this extremely prejudicial summation was merely the culmination of the prosecutor's plan to smear Mr. Williamson's character

despite the fact that it was not in issue. This plan was carried out by innuendo in an unfair, and what appears to be, less than professional manner.

During direct examination of Mr. Olivero, the witness was referring to an employees' record card to aid his testimony. It was stated that the record card contained information regarding disciplinary action taken against postal employees. At that point, the prosecutor connected the particular card to Mr. Williamson in spite of Defense Counsel's request for a side bar conference on this issue (T-306).

The prosecutor utilized the same tactic during cross-examination of Martin Schrager over Defense Counsel's objection:

Q. Does the fact an employee is removed for cause affect the amount of money that would be paid to him when he leaves or is terminated?

MR. SHAW: Objection.

THE COURT: Objection overruled.

Q. Did you understand the question?

A. I didn't know you had finished.

Q. Does the fact that an employee is removed for cause, fired, would that affect the amount of money paid to him upon being fired?

A. Yes.

Q. It would?

A. Yes.

Q. Would it reduce it?

A. They may withhold it for certain reasons. That I don't know. I don't know the case.

Q. Do you know whether the defendant was removed for cause?

A. No, I don't know nothing about this case at all.

MR. BUSH: No further questions, your Honor.

MR. SHAW: Your Honor, I would like some more questions.

THE COURT: All right.

MR. SHAW: First I would like a side bar, your Honor.

THE COURT: All right.
Step down Mr. Schrager.

(At the side bar)

MR. SHAW: Your Honor, first I would most strenuously object to the U.S. Attorney bringing up the firing for cause because I think that that goes to the character of the witness. I don't think I opened the door. I didn't put this man on as a character witness. I just asked him to testify from the records in front of him.

MR. BUSH: I objected to opening the whole issue of how much was paid to this defendant.

THE COURT: What is your application?

MR. SHAW: My application is to have the testimony stricken.

THE COURT: Denied.

(T-494 to 495)

The final, clearly prejudicial smear of Mr. Williamson's character by the prosecutor occurred when he exclaimed to the jury on summation:

The Government does not minimize
defendant's criminal record --
I'm sorry, Simon's criminal
record.

(T-538) (Emphasis added)

By referring to these alleged past acts, the prosecutor succeeded in characterizing Mr. Williamson as a man with a sordid background, of ill repute and bad reputation who was opt to resort to criminal conduct with which he was indicted for and being tried for. These references to past acts were directly contrary to the firmly establsihed rules of evidence, trial practice and procedure "that the prosecution may not initially attack defendant's character" 1 Wigmore §57 (3rd Edition, 1940).

In Michelson v. United States, 335 U.S. 469 (1948), The United States Supreme Court reaffirmed its adherence to this evidentiary rule. Hon. Justice Jackson stated therein that the policy behind the rule is not that the character of the accused is irrelevant, but that:

...it is said to weigh too much with the jury and to so overpersuade them as to prejudge one with a bad general record and deny him a fair opportunity to defend against a particular charge.

Id., at 476

For the same policy reasons, evidence or prior unsavory character that was admitted against a defendant who did not testify in his own behalf required a reversal in United States v. James, 208 F.2d 124 (2nd Cir., 1953). Erroneously admitting evidence of a prior crime was one of the reasons a

reversal was required in United States v. DeCicco, 435 F.2d 478, 483 (2nd Cir., 1970).

It is respectfully submitted that the Hon. Judge Cooper compounded the prejudicial statements of the prosecutor when he charged the jury:

Now, let me comment on something that had to do with the summation also of Mr. Bush where he touched upon something to the effect that the defendant was discharged for cause, from his postal job. If you find there is no proof, satisfying proof to you, you may reject that completely. If the proof warrants your coming to that conclusion, or if you think it does, that is an entirely different matter. If the proof before you is insufficient to establish that proposition that he was discharged for cause, you should disregard it completely.

(T-612) (Emphasis added)

This prejudicial charge was given after the judge said:

I will tell the jury that they just can't come to the conclusion of a discharge just because someone uses the word "discharge."

(T-554 A)

after Defense Counsel properly raised the issue.

POINT III

THE CONDUCT OF THE TRIAL JUDGE,
PARTICULARLY, TAKING OVER THE
PROSECUTION AT CRUCIAL TIMES (IN
EFFECT ACTING IN THE DUAL ROLE
AS PROSECUTOR AND AS A JUDGE),
INTERFERING WITH CROSS-EXAMINATION
BY DEFENSE COUNSEL, AND EXPRESSING
A HOSTILE ATTITUDE TOWARDS DEFENSE
COUNSEL EFFECTIVELY DEPRIVED APPELLANT-
DEFENDANT, MR. WILLIAMSON, OF AN
ADEQUATE DEFENSE BY HIS ADVOCATE AND
A FAIR TRIAL.

Defendant respectfully submits that the trial below was marred by frequent acts equivalent to misconduct on the part of the trial judge. The Honorable Judge Irving Ben Cooper failed in his duty to "exercise self-restraint and preserve an atmosphere of impartiality and detachment."

Pariser v. City of New York, 146 F.2d 431, 433 (2nd Cir., 1945).

The Judge assumed control of the prosecution at an early stage in the trial when Douglas Simon, the prosecution's "star witness" was on the witness stand. Mr. Simon testified that he wasn't certain which participant of a crucial conversation made an incriminating statement (T-6). The Court interjected immediately and, it is most respectfully submitted by Defendant-Appellant, that he practically coached the witness into identifying Mr. Williamson (T-6,7). Over the and despite the proper objection by Defense Counsel (T-7), Defendant-Appellant further submits most respectfully that Judge Cooper's actions persisted in prejudicially drawing attention to Mr. Williamson (T-7). It is respectfully submitted that the Court urged on the prosecution,

wanting "to know every step no matter who gets hit by it." (T-18)

Courts have long known that the judge's conduct is crucial in any case. Indeed, "his lightest word or intimation is received with deference, and may prove controlling." Starr v. United States, 153 U.S. 614, 626 (1894).

Mr. Simon testified how he participated in the robbery and how the proceeds were distributed (T-16-22). The Judge insisted on having parts of the story repeated, making remarks to the prosecutor, such as:

... I will step in if you don't make it clear. (T-22)

...That is the guts of the case and I am not going to sit here like a wooden Indian and say nothing when I know full well what the law demands. (T-22, 23)

...Now, either you do it or I'll do it. (T-23)

Judge Cooper decided to "do it" as he proceeded to 16 questions of Mr. Simon (T-23, 24, 25, 26, 27). After Defense Counsel was granted a continuing objection to this type of judicial behavior (T-27), 9 more questions came from the bench (T-27, 28, 29).

It is most respectfully submitted that the Judge's questioning went beyond his "power to elicit the truth by an examination of the witness." Glasser v. United States, 315 U.S. 60, 82 (1942). This is especially true in light of the fact of how often cross-examination by Defense Counsel of Mr. Simon was interrupted by the Court (T-80, 81, 82, 88, 105, 107, 108).

It is respectfully submitted that the Judge's attitude towards Defense Counsel and the Prosecutor was overtly displayed during a colloquy out of the presence of the jury (T-99, 100, 101). Defense Counsel was threatened with contempt after duly making a record on an evidentiary point. "...I will deal with you appropriately at the right time," Judge Cooper exclaimed (T-100). He then turned to the Prosecutor and asked, "Then why didn't you object? Why did I have to step in?" (T-101).

It is respectfully submitted that an extremely damaging and prejudicial act by the Judge occurred when he ordered Mr. Simon to read a prior sworn statement to the jury (T-108, 109, 110). At this point, all "appearance of impartiality and judicious detachment" disintegrated. United States v. Nazzaro, 472 F.2d 302, 313 (2nd Cir., 1973). It is most respectfully submitted that the Judge

unmistakably rehabilitated a prosecution witness whose credibility had been undermined by Defense Counsel.

Id., at 307

and that it was the Prosecutor and not the Judge who should have initiated such a procedure.

It is respectfully submitted that further attacks on Defense Counsel occurred outside the presence of the jury (T-238, 239, 240). The Judge appeared ready to punish the defendant for Defense Counsel's alleged "unscrupulous behavior":

THE COURT: ...I am beginning to think that possibly we ought to reconsider the application by the Government to remand the defendant. (T-238)

These threats of vicarious punishment have been appropriately condemned by this Circuit:

Improper conduct of counsel is not to be remedied by revocation of his client's bail or restriction of visiting privileges as was attempted here.

United States v. Persico,
305 F.2d 534, 540 (2nd Cir., 1962)

It is respectfully submitted that the Court's actions resulted in the Court's assumption of control of cross-examination of a prosecution witness, one Fred Howe (T-271, 272, 273). Furthermore, when Mr. Howe did not respond to the Court's question to the Court's satisfaction, the witness was told:

THE COURT: All I'm asking you is a simple question. Must you add something and give him (Defense Counsel) another half hour to ask questions. (T-271)

It is respectfully submitted that this was not the only sarcastic remark directed towards Defense Counsel (t-191, 260)

The Judge's repeated recriminations and displays of temper towards Defense Counsel could not have helped but prejudice the jury.

United States v. Persico, supra,
at 537.

It is respectfully submitted that the trial judge was not "relatively even handed". United States v. Weiss, 491 F.2d 460, 469 (2nd Cir., 1974). Furthermore, the trial court did not instruct the jury to ignore the exchanges between Defense Counsel and the Judge. Such an instruction aided in mitigation

of the judicial misconduct in United States v. Boatner, 478 F.2d 737, 741-742 (2nd Cir., 1973); Accord; United States v. Cruz, 455 F.2d 184, 185 (2nd Cir., 1972) cert. denied, 406 U.S. 918 (1972).

Defense Counsel respectfully submits that counsel attempted to act as effectively as he could under further threats of contempt and attacks on his character by the Court, despite the fact that they were often made out of the presence of the jury (T-283, 367). An examination of the entire record, it is respectfully submitted, illustrates the inevitable conclusion that the conduct of the trial judge effectively denied Larry Williamson his constitutional right to a fair and impartial trial. United States v. Guglielmini, 384 F.2d 602, 605 (2nd Cir., 1967); United States v. Ah Kee Eng, 241 F.2d 157, 161 (2nd Cir., 1957); United States v. Dellinger, 472 F.2d 340, 385-391 (7th Cir., 1972), cert. denied, 410 U.S. 970 (1973).

CONCLUSION

For all the aforementioned reasons, it is respectfully argued that the judgement of the court below should be reversed and a new trial ordered below on the entire indictment.

Respectfully submitted,

STUART R. SHAW, ESQ.
600 Madison Avenue
New York, New York 10022
(212) 755-5645

ADDENDUM TO POINT III

The following is a synopsis of additional instances of the Judge's conduct not necessarily indicated in the main brief. The items of testimony and colloquy cited are by no means the entire picture, rather they are intended to full out Point III presented in the main brief.

It is respectfully submitted that the trial court began to act in the dual role as prosecutor and judge from the very beginning of the trial. Most of the initial questions put to the witness, Simon, were made by the Court (T-4 to T-9, line 4)

The Court continued acting in the said dual role of prosecutor and judge when the Court instructed the Prosecutor as to the most opportune time to present the photographs, Exhibit 1A, to the jury T-18). However, when Defense Counsel attempted to present evidence to the jury at different times throughout the trial, the Court interfered and prohibited permissible activity, the very procedure the Court had instituted in behalf of the Prosecutor (T-429-430, T-348-349).

It is respectfully submitted that the trial judge unfairly interjected his presence and actively aided the prosecution in attempting to prove the Prosecutor's case despite the fact that the issue of receipt and parcelling out of the money stolen had already been covered (T-22 to T-23, line 12). The Court again questioned in the role of prosecutor in violation of the Court's clearly defined role of judge of the law (T-23, line 14 to T-35, line 5).

December 19, 1974
The date

(Atlys Present)

The Court continued in the aforementioned dual role during the continuation of the testimony on the second day of the trial. When Defense Counsel objected to the Prosecutor going back to ground covered the previous day in regard to the alleged apartment's location, the Court stated how the Prosecutor was to prove his case while refusing to hear Defense Counsel on new grounds for objecting (T-20, line 20 to T-22, line 5; T-42, line 24 to T-44, line 15).

It is respectfully submitted the Court continued the aforementioned dual practice and effectively prevented the witness from supplying "time and place" even though Counsel requested this information properly and the Court had granted Counsel's request (T-46, line 14 to T-47, line 9). The Court again aided the Prosecutor in formulating questions (T-47, line 21 to T-48, line 3). In effect, the Court was rehabilitating a witness who had contradicted himself (T-45, lines 18-21; T-46, lines 11-13).

The Court did not cease and desist in its interference even on Defense Counsel's attempt at cross-examination of Simon (T-54, line 18 to T-55, line 17), the "most important witness called to the stand" (T-615). It is respectfully submitted it was the Prosecutor's role to object "not responsive." Counsel's cross-examination was marred and Counsel for the Defense was thrown off the track.

The Court interjected its presence and effectively changed the meaning of Counsel's questions to Simon, and the result and responses of same, and thereafter took over the examination (T-80, line 12 to T-82, line 8). This was especially damaging in that the Court asked for "...your participation in the postal episode, do you understand what I am asking?" (T-80, lines 23-24) when Counsel did not ask that question (T-80, lines 12-13).

It is respectfully submitted the Judge again harassed Counsel at T-90 when Counsel attempted to utilize a time-honored practice to illicit information as to the time of an event (T-90, lines 1-16), terming Counsel's questions inconsequential in the presence of the jury (T-90, line 8). The Court prevented Counsel from illiciting important information from Simon (T-90, line 25; T-91, line 20), but failed to interject and to explain to the witness that a document need not have been seen before to refresh recollection (T-90, lines 15-20).

The Court prohibited Counsel during cross-examination from inquiring of the witness as to an event briefly covered on an earlier day, despite the fact he had permitted the Prosecutor to go back to an area he had clearly covered on a previous day (T-90, line 20 to T-91, line 19; T-96, line 9 to T-97, line 6; T-43). It should be noted that the Court, in the presence of the jury, alluded to statements of Counsel "off the record" prejudicing the defendant's case. Said statements are no where

to be found in colloquy, nor were they ever stated by Counsel (T-97, line 2).

The Court admitted to acting as prosecutor (T-101, lines 20-21). The Court utilized the highly prejudicial procedure of having a witness read a document to the jury that the Prosecutor could have had read on re-direct or shown to the jury. This action interrupted Defense Counsel's cross-examination (T-110, line 15 to line 22).

The Court twice refused to permit Defense Counsel the opportunity to show disputed exhibits to the jury during his cross-examination (T-349, T-353), despite the fact this procedure was utilized by the Prosecutor at the Court's instruction throughout the trial (T-368). The Court continued a prosecutorial role again (T-358-360; T-362-363). The Court disparaged Defense Counsel (T-364-368). The Court disparaged Defense Counsel again in the presence of the jury and threatened the jury with evening sessions (T-396). The Court continued along this line (T-406, lines 6 and 7), preventing Counsel from finishing his cross-examination. The Court unduly commented on Counsel's questions in a derogatory fashion before the jury (T-414) and again lashed out at Counsel citing the "late hours" and "spending time asking these idle questions" (T-416, line 10 and lines 22-25) despite Counsel's attempt at explanation (T-417, lines 1-5).

The Court again aided the Prosecutor in formulating questions (T-426, lines 18-22) and also finished most of the prosecution's direct case on the witness, Sanchez (T-426, 427, 428, 429). The Court ended the days examination before the jury with threatening night sessions again and intimating it was Defense Counsel's fault (T-433).

The Court denied Defense Counsel's request for a one hour summation and threatened Defense Counsel on the manner of delivery of his summation (T-440). On the following day, The Court interrupted the Defense Counsel's cross examination of his key witness despite objection (T-448) and the subsequent "connection" (T-453). The Court's statement as to the date of the indictment was totally out of order and could have been utilized on the soon to follow charge (T-488). When Defense Counsel tried to object to the prosecution's comments on "removed for cause" (T-494, 495) and asked for a side bar conference to explain, his attempts in good faith were unheeded, nor did the Court aid Counsel in obtaining records duly subpoenaed (T-496), or in keeping them before the jury (T-496-498). Then the Court questioned a juror, Mr. Britzel, as to alleged "looks (T-498-T-500). The Judge then attacked Defense Counsel anew to unnerve him before his summation that was to immediately follow (T-500-503). The attack on the juror is especially interesting in regard to similar feelings expressed by the Court as to the defendant (T-152).

APPENDIX

- A. Index to Record on Appeal
- B. Docket Sheet
- C. Indictment #74 Cr. 579
- D. Judge's Handwritten Sentence
- E. Defendant's Motion for Bill of Particulars, Discovery and Inspection, Order directing witness for Government be produced for interview for Defense Counsel, Request for information on State or Federal Immunity or Leniency in regard to witness for the Government
- F. Bill of Particulars
- G. Discovery and Inspection
- H. Attorney's Affirmation
- I. Affadavit of A.U.S.A. John Bush in regard to above mentioned Motion and Bill of Particualrs for Defense Counsel
- J. Memorandum of Judge Irving Ben Cooper in regard to Defense Counsel's Motion, Bill of Particulars, Discovery and Inspection, etc.
- K. Judgment and Commitment Order
- L. Notice of Appeal
- M. Clerk's Certificate
- N. Exhibit A, Douglas Simon's sworn statement
- O. Exhibit B, Wanted Poster
- P. Exhibit I for Identification, Subpoena of postal records for the Defendant
- Q. Grand Jury Minutes of Douglas Simon, the subject of Point I of this Brief

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

-----x
UNITED STATES OF AMERICA,

-against-

LARRY WILLIAMSON,

Appellant.

UNITED STATES DISTRICT
COURT FOR THE SOUTHERN
DISTRICT OF NEW YORK

#74 Cr. 579

Judge Irving Ben Cooper

-----x
INDEX TO THE RECORD ON APPEAL

Certified copy of docket entries	A-C
Certified copy of Indictment	1
Order regarding Mr. Shaw's application concerning lack of communication	2
Docket Entry Sheet	3
Criminal Complaint	4
Magistrate's Warrant of Arrest	5
Disposition Sheet	6
Temporary Commitment	7
Appearance Bond	8
Financial Affidavit	9
Appointment of Counsel	10
Government's Affidavit for a Writ of Habeas Corpus ad testificandum for Douglas Simon	11
Defendant's Affidavit and Notice of Motion for a Bill of Particulars, Discovery, Inspection, Inspection of the Grand Jury Minutes, infor- mation regarding promises of immunity made by the Government to co-conspirators	12
Government's Affidavit in Response to Defendant's omnibus motion	13
Memorandum Opinion	14
Government's affidavit in response to Defendant's Order to show cause for a Writ of Habeas Corpus ad testificandum to produce Arthur Campbell	15
Writ	16
Judgment and Commitment	17

A

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

-----x
UNITED STATES OF AMERICA,
-against-
LARRY WILLIAMSON,
Defendant.

UNITED STATES DISTRICT
COURT FOR THE SOUTHERN
DISTRICT OF NEW YORK

#74 Cr. 579

Judge Irving Ben Cooper

-----x
INDEX TO THE RECORD ON APPEAL (Continued)

Notice of Appeal	18
Transcript of Proceedings dated: November 11, 13, 14, 15, 1974 June 17, 1974 December 19, 1974	19
Clerk's Certificate	20

JUDGE COOPER

74C

12-27

For U. S.:

John N. Bush, AUSA,
-264-6437

For Defendant:

ABSTRACT OF COSTS (01)	AMOUNT	CASH RECEIVED AND DISBURSED			
		DATE	NAME	RECEIVED	DISBURSED
Fine,		12/2/74	Shaw	5	
Clerk,		1-1-74	Shaw		
Marshal,					
Attorney,					
XXXXXX 18					
XXXXX371, 2114, 1708 & 2.					
Consp. to assault and rob postal employee. (Ct. 1)					
Robbery of postal employee. (Ct. 2)					
Assault w/dangerous weapon. (Ct. 3)					
Mail theft. (Ct. 4)			(Four Counts)		

DATE	PROCEEDINGS
6-6-74	Filed indictment.
8-10-74	Deft. (no atty. Pres.) Court directs entry of not guilty plea. Motions in 10 days. Deft. released on his own recognizance. Case referred to Judge Cooper. Bauman, J.

8-5-74	Filed ORDER-regarding Mr. Shaw's application concerning a "lack of communication" with his client, we withdraw, set aside and vacate the two orders which we placed upon the record in open court on June 17, 1974. Mr. Shaw shall continue to represent deft. Larry Williamson...So Ordered: Cooper, J.
--------	--

ONLY COPY AVAILABLE

74-CR. 579

page #2

DATE	PROCEEDINGS	CLERK'S FILE	
		PLAINTIFF	DEFENDANT
9-25-74	Filed the following papers received from Magistrate Raby, (Mag. #74-126) Docket Entry Sheet Criminal Complaint, S.D.N.Y. Magistrate's Warrant of Arrest, S.D.N.Y. Disposition Sheet Financial Affidavit, CJA Form 23 Appointment of Counsel Appearance Bond in the sum of \$5,000.00 P.R.B. secured with \$500.00 cash Temporary Commitment		
10-15-74	Filed Govt's. notice of readiness for trial on or after 10-15-74,		
11-1-74	Filed Govt's. affidavit for a Writ of Habeas Corpus ad testificandum for Douglas Simon. Writ issued to Superintendent, Great Meadow Correctional Facility, Comstock, N.Y., ret. 11-18-74.		
11-5-74	Filed deft's. affidavit & notice of motion for a bill of particulars, discovery & inspection, inspection of the Grand Jury minutes, suppression, production of inmate witnesses and for information regarding promises of immunity made by the Govt. to co-conspirators.		
11-6-74	Filed Govt's. affidavit in response to deft's. omnibus pretrial motion dated 11-6-74.		
11-6-74	Filed MEMORANDUM OPINION #41400-Deft's. motion is disposed of as follows. The bill of particulars is granted and denied in part as indicated. Discovery and inspection is granted and denied in part as indicated. Inspection of Grand Jury minutes is denied. The motion to suppress is denied with leave to renew at the time of trial if appropriate. Request for production of witnesses prior to trial is denied. As to the request for information regarding promises of immunity, the Government's response is satisfactory. SO ORDERED...Cooper, J. (mailed notice)		
11-8-74	Filed Govt's. affidavit in response to deft's. order to show cause for a writ of habeas corpus ad testificandum to produce Arthur Campbell. Writ issued returnable 11-11-74.		B
	Cont'd. on Page #3		

D. C. 110 Rev. Civil Docket Continuation

DATE	PROCEEDINGS
11-11-74	Jury trial begun before Cooper, J.
11-12-74	Trial continued.
11-13-74	Trial continued.
11-14-74	Trial continued.
11-15-74	Trial continued. Jury verdict at 5:47 P.M. - Jury finds the deft. guilty on all counts. Jury polled. Deft. moves to set aside verdict. Motion denied. Pre-sentence report ordered. Probation notified. Deft. remanded for sentence on December 27, 1974 at 10:00 A.M. Cooper, J.
11-18-74	Filed envelope impounded & ordered sealed 11-12-74.....Cooper, J. (Placed in vault in Room 602).
11-20-74	Filed Writ of Habeas Corpus for Arthur Campbell with marshal's return. Writ satisfied 11-13-74.
12-19-74	Filed JUDGMENT and COMMITMENT (atty present) It is adjudged that the deft. is hereby committed to the custody of the Attorney General or his authorized representative pursuant to Section 4208 (b) of Title 18, U.S. Code for study, report and recommendations as described in Section 4208 (c). This commitment is deemed to be for the maximum sentence provided under law for counts 1 thru 6 inclusive, to run consecutively unless altered pursuant to said Section upon receipt of report and recommendation. The recommendations which the director of prisons believes would be helpful in determining the disposition of this case shall be furnished to the Court within THREE (3) MONTHS. Deft. is remanded.....Cooper, J. Issued commitment 12-24-74.
12-27-74	Filed deft's. notice of appeal from the judgment of conviction as entered on 12-19-74. Mailed notice to: Larry Williamson, 427 West St., N.Y.C. 10014 and U.S. Attorney's Office.

A TRUE COPY
RAYMOND F. BURGHARDT, Clerk

A E Thompson
By _____
Deputy Clerk

C
B3

JNB:sr
73-0800
n - 454

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA

74CMW 5794

-v-

LARRY WILLIAMSON,

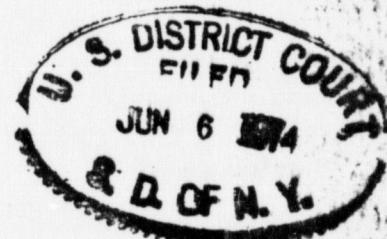
: INDICTMENT

Defendant.

: 74 Cr.

x

COUNT ONE



The Grand Jury charges:

1. From on or about the 1st day of April, 1972 and continuously thereafter up to and including the 1st day of April, 1973, in the Southern District of New York and elsewhere, LARRY WILLIAMSON, the defendant, and Bruce Leathers, Douglas Simon, and Arthur Campbell, named herein as co-conspirators but not as defendants, and others to the Grand Jury unknown, unlawfully, wilfully and knowingly combined, conspired, confederated and agreed together and with each other to violate Sections 1708 and 2114 of Title 18, United States Code.

2. It was a part of said conspiracy that said individuals unlawfully, wilfully and knowingly would steal, take and abstract from authorized depositories for mail letters, postal cards, packages, bags and mail.

3. It was further a part of said conspiracy that said individuals unlawfully, wilfully and knowingly would, with intent to rob, steal and purloin mail matter, money and other property of the United States, assault and by use of dangerous weapons put in jeopardy the lives of persons having lawful charge, control and custody of such mail matter, money and other property of the United States and would rob said persons of said mail matter, money and other property of the United States.

OVERT ACTS

In pursuance of the said conspiracy and to effect the objects thereof, the following overt acts, among others, were committed in the Southern District of New York:

1. On or about the 16th day of June, 1972, LARRY WILLIAMSON, the defendant, and Bruce Leathers, Douglas Simon and Arthur Campbell drove to the vicinity of the Boulevard Postal Station, Bronx, New York.

2. On or about the 16th day of June, 1972, Bruce Leathers and Douglas Simon armed themselves with hand guns.

3. On or about the 16th day of June, 1972, Bruce Leathers and Douglas Simon entered the Boulevard Postal Station, Bronx, New York.

4. On or about the 16th day of June, 1972, Larry Williamson, the defendant, and Bruce Leathers, Douglas Simon and Arthur Campbell went to an apartment.

(Title 18, United States Code, Section 371.)

COUNT TWO

The Grand Jury further charges:

On or about the 16th day of June, 1972, in the Southern District of New York, LARRY WILLIAMSON, the defendant, unlawfully, wilfully and knowingly did with intent to rob, steal and purloin mail matter, money and other property of the United States assault four persons having lawful charge, control and custody of such mail matter, money and other property of the United States, to wit, four United States Postal Service employees then at the Boulevard Postal Station, Bronx, New York, having lawful charge, control and custody of approximately \$12,296.00 in cash, \$9,726.49 in checks and money orders and mail, and did rob said persons of said mail matter, money and other property of the United States.

(Title 18, United States Code, Sections 2114 and 2.)

sr
0800
- 454

COUNT THREE

The Grand Jury further charges:

On or about the 16th day of June, 1972, in the Southern District of New York, LARRY WILLIAMSON, the defendant, in effecting and attempting to effect the offense set forth in Count Two of this Indictment unlawfully, wilfully and knowingly, did put said four United States Postal Service employees' lives in jeopardy by the use of dangerous weapons, to wit, hand guns, and did wound one of said employees by means of striking him on the head with a hand gun.

(Title 18, United States Code, Sections 2114 and 2.)

COUNT FOUR

The Grand Jury further charges:

On or about the 16th day of June, 1972, in the Southern District of New York, LARRY WILLIAMSON, the defendant, unlawfully, wilfully and knowingly did steal, take, and abstract from a Postal Station, to wit, the Boulevard Postal Station, Bronx, New York, four mail bags containing approximately \$12,296.00 in cash, \$9,726.49 in checks and money orders and mail.

(Title 18, United States Code, Sections 1708 and 2.)

Gerald J. Tamm
Foreman

Paul J. Curran
PAUL J. CURRAN
United States Attorney

A TRUE COPY
RAYMOND F. BURGHARDT, Clerk

By E. Harlan
Deputy Clerk

at

JMB:emw
73-0800

(3.-7.) These requests are opposed as being the

-20-

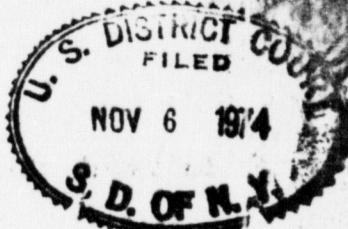
December 19, 1974 (Atlys Present)

The deft. is committed to the Atly. Gen. or his
representative Pursuant to Section 4208 (B) of Title
U.S. Code. for Study, Report and recommendation
described in section 4208 (C). This commitment
deemed to be for the maximum sentence provided
under law for Courts 1 three & inclusive, to be
consecutively, unless altered Pursuant to said
upon receipt of report & recommendation. The
recommendations which the Director of Prisons
would be helpful in determining the disposition
of this case shall be furnished to the Court with
three (3) months. Deft. advised of his right to appeal.
The defendant is remanded.

Cooper, Jr.

ONLY COPY AVAILABLE

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK



UNITED STATES OF AMERICA,

-against-

LARRY WILLIAMSON,

Defendant.

NOTICE OF MOTION

~~74 CR 579~~ (IBC)

74 CR 579

SIR:

PLEASE TAKE NOTICE, that upon the annexed Affirmation of STUART R. SHAW, ESQ., dated the 10th day of October, 1974 and upon all of the papers and proceedings heretofore had herein, the undersigned will move this Court located at the Courthouse, Foley Square, New York, New York on the 11th day of October, 1974 at 12:30 o'clock in the forenoon of said day or as soon thereafter as counsel can be heard for the following pre-trial relief:

1. Directing that the Government provide the defense with a Bill of Particulars of the Indictment, as set forth in Schedule I annexed hereto.
2. An Order directing the Government to provide the defense with discovery and inspection, as specified in Schedule II annexed hereto.
3. An order granting to the defendant inspection of the Grand Jury minutes with regard to the instant indictment.
4. An order suppressing any and all identification of LARRY WILLIAMSON made by one Douglas, Simon in that said identification is unconstitutional and illegal.
5. An Order directing that the Government bring all witnesses presently incarcerated to the United States Court-

house for the Southern District of New York prior to trial for interviewing by defense counsel herein.

6. An order directing that the Government inform defense counsel as to whether or not any of the alleged co-conspirators/defendants herein has been granted immunity from prosecution or has been promised leniency in exchange for their aide and/or testimony in regard to this case; specifically as involves a New York State prosecution against a co-conspirator/defendant, together with such other and further relief as to this Court may seem just and proper under the circumstances.

Dated: New York, New York

10th day of October, 1974

Respectfully submitted,

STUART R. SHAW, ESQ.
Attorney for Larry Williamson
233 Broadway Suite 3303
New York, New York 10007

E 2

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----x
UNITED STATES OF AMERICA,

-against-

LARRY WILLIAMSON,

Defendant.

-----x
SCHEDULE I - BILL OF
PARTICULARS

#73 Cr. 1132 (IBC)

1. The name of the confidential source named in #3 of the complaint in this matter.
2. Who is Douglas Simon?
- What is his residence address?
 - Does he have a criminal record, and if so, a copy of said record.
 - What is Douglas Simon's occupation?
3. Who was the Government and/or police official who interviewed said Douglas Simon?
4. Exactly where was the alleged "getaway" vehicle parked?
- The make and year of the car; color and any distinguishing features.
 - The license plate number of the car.
 - Who was allegedly driving the car at the time of the alleged criminal activities? Where was Larry Williamson allegedly seated; did he ever exit said vehicle?
5. Where did the defendant and the other defendants allegedly involved in the within criminal activity allegedly "split the proceeds"?
- What was the "alleged "split"?
 - Were any of the bills recovered?
 - What were the denominations of the bills allegedly stolen by the defendant?
 - The names of the men who allegedly removed the monies from the post office.
6. Who is Judy Phipps?
- Where does she live?

F.

b. What is her occupation and where is she employed at same?

7. Names and addresses of all government witnesses in this matter, to be handed over to counsel for the defendant no later than October 15, 1974.

8. All oral, written, or tape recorded statements whether exculpatory or otherwise, made by the defendant made to any government agent, or made to a third person and thereafter related to a government agent.

9. The results of any physical or mental examinations, scientific tests conducted in regard to this case.

10. Names and addresses of any and all unindicted co-conspirators in this matter.

11. Date, time and place at which the alleged conspiracy was planned by the defendant and with whom it was planned.

12. What was the role of each of the alleged conspirators in furtherance of the said alleged conspiracy?

13. Where was the defendant and the alleged co-conspirators immediately prior to their driving to the vicinity of the Boulevard Post Office?

14. Date, time and place at which Bruce Leathers and Douglas Simon allegedly armed themselves with hand guns.

a. Who was present when the above named armed themselves?

b. The make, model and serial number of the hand guns allegedly possessed by the above named.

c. Where, or from whom were these hand guns allegedly purchased?

15. Exact location of the defendant when the conspirators allegedly gained entrance to the Boulevard Post Office on June 1, 1972.

16. On June 1, 1972, did the defendant at any time enter said Boulevard Post Office?

17. The exact address and lessor of the apartment to which the defendant allegedly went on June 16, 1972.

a. Was the alleged meeting in the above named apartment before or after going to the Boulevard Post Office?

18. What acts, if any, were performed in furtherance of the within conspiracy and who performed which acts?

19. State the exact location within the said Post Office from which the defendant allegedly took the monies, checks and money orders.

20. What other property, if any, was stolen from the Post Office on June 16, 1972?

21. Who, if anyone, was assaulted by the defendant, and/or his alleged co-conspirators in furtherance of the alleged robbery?

a. What injuries did these people receive?

22. The mode or manner in which the four mail bags were allegedly removed from the Boulevard Post Office.

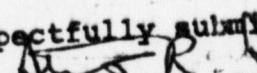
a. The weight and size of the mail bags.

23. Names and addresses of any and all individuals present at the time of the criminal activities alleged to have taken place herein.

24. The serial numbers of the currency allegedly taken from the Boulevard Post Office.

Dated: New York, New York
10th day of October, 1974

Respectfully submitted,


STUART R. SHAW, ESQ.
Attorney for Larry Williams
233 Broadway Suite 3303
New York, New York 10007

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----x
SCHEDULE II - DISCOVERY AND
INSPECTION

UNITED STATES OF AMERICA,

-against-

LARRY WILLIAMSON,

#73 Cr. 1132

Defendant.

-----x

1. The results of any scientific tests, including fingerprinting, voice and handwriting, conducted by the government in regard to this case.
2. Any statements made to any government official by the defendant.
3. A copy of any and all photographs of LARRY WILLIAMSON shown to one Douglas Simon and any other photographs shown to Douglas Simon in relation to the alleged events.
4. Whether or not one ARTHUR CAMPBELL is cooperating with the Government in this matter and whether or not he has received any promises of leniency in this regard from the Government.
5. A copy of ARTHUR CAMPBELL'S sentencing minutes and a copy of any statements made by him in regard to the alleged events either at plea, or at any time.
6. A copy of the defendant LARRY WILLIAMSON'S fingerprints.
7. The names and addresses of any and all Government witnesses at the trial of the within matter.
8. Inspection of the Grand Jury Minutes in regard to this case.
9. Have any charges been brought against the four men named in the complaint herein?
10. The transcript of the trial in Bronx County Supreme Court of ARTHUR CAMPBELL for a crime similar to the alleged crime herein. During this trial certain witnesses testified and it is believed that the Government intends to call the same witnesses at the trial of Larry Williamson. Counsel is entitled to this information as it is Brady material, 3500 material, and, upon information and belief, is necessary to

properly impeach the credibility of these same witnesses.

Dated: New York, New York

10th day of October, 1974

Respectfully submitted,

STUART R. SHAW, ESQ.
Attorney for Larry Williamson
233 Broadway Suite 3303
New York, New York 10007

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----x
UNITED STATES OF AMERICA,
-against-
LARRY WILLIAMSON,
Defendant.

AFFIRMATION

#73 Cr. 1132 (IBC)

STUART R. SHAW, an attorney duly admitted to practice law in the Courts of the State of New York, affirms and says under penalties of perjury:

I am the attorney for the defendant LARRY WILLIAMSON and have been appointed to such capacity pursuant to the provisions of the C.J.A. I submit this Affirmation in support of the annexed notice of motion for specific pre-trial relief.

The requests contained in the defendant's Motion for a Bill of Particulars are all calculated to assist him in preparing his defense and in examining trial witnesses. It is believed that the information requested by counsel is either in the hands of the United States Attorney's office for the Southern District of New York or that the United States attorney is privy to it. It is further submitted that the defendant is entitled to all of the information requested as a matter of law. The same situation prevails in regard to defendant's motion for discovery and inspection.

It is respectfully suggested that a transcript of the Grand Jury minutes be provided to the defendant, or, in the alternative, that the Court inspect said minutes. Such inspect

ONLY COPY AVAILABLE

H.

would materially aid the Court in determining whether the indictment is predicated upon an illegal identification of the defendant as defendant claims herein.

In addition, the defendant requests that the identification of LARRY WILLIAMSON by one Douglas Simon be suppressed upon the ground that constitutional and statutory procedures were not complied with. Upon further particularization by the Government, the basis for this motion will be further particularized.

Defendant further requests that the Government produce its witnesses at the United States Courthouse for the Southern District of New York so that they may be interviewed by defense counsel. This is fully within the range of the Government's power and ability. Such interviews are essential if the defendant is to be fully capable of building his defense and if he is to be aware of the charges which he must meet.

WHEREFORE, it is respectfully requested that the relief requested in the annexed notice of motion be in all respects granted.

Dated: New York, New York

10th day of October, 1974

Stuart R. Shaw

STUART R. SHAW

H₂



UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA,

-v-

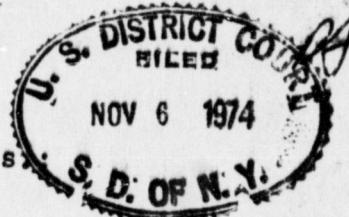
AFFIDAVIT

74 Cr. 579
(I.B.C.)

LARRY WILLIAMSON,

Defendant.

STATE OF NEW YORK
COUNTY OF NEW YORK
SOUTHERN DISTRICT OF NEW YORK



JOHN N. BUSH, being duly sworn, deposes and says:

1. I am an Assistant United States Attorney and, as such, have been placed in charge of the above-captioned case. I make this affidavit in response to defendant's omnibus pretrial motion.*

2. Defendant's motion contains six different requests for relief. The first two, a request for a Bill of Particulars and a request for discovery, are answered in the succeeding portions of this affidavit. The last four are answered seriatim below:

Inspection of Grand Jury Minutes

This request is opposed in that it fails totally to establish any grounds for the possible dismissal of the indictment as is required by Rule 6(e) to justify a disclosure.

*While a response on the merits of defendant's motion is made in this affidavit, it should be noted that the motion coming as it does some four months after defendant's arraignment hardly seems timely.

of grand jury minutes to a defendant. If requested, however, the Government will make an in camera disclosure of the relevant grand jury minutes to the Court so as to satisfy any question which may exist about them.

Suppression of Identification of Defendant

This request was prompted by the use of a spread of photographs in the course of the Government's investigation for the purpose of identifying the defendant Williamson as one of the perpetrators of the crimes in question. While the procedures employed were entirely proper, the Government has no objection if the Court in its discretion determines that a brief hearing immediately prior to trial of the type called for in Simmons v. United States, 390 U. S. 377 (1968) is conducted with respect to prospective Government witnesses who were shown the Williamson photo spread.

Production of Witnesses for Interview

The Government has neither the duty to tell defense counsel whom its witnesses will be nor to produce them so that opposing counsel may interview them. Accordingly, this request is opposed as being contrary to the law.

Material for Use in Cross-Examination of
Government Witnesses

The Government will provide all such information of the type requested in sufficient time so that it may be used in the cross-examination of any witness to which it applies.

3. With respect to defendant's request for a Bill of Particulars and for discovery, the Government notes that much of the material requested already has been provided defendant. Nevertheless to keep the record straight, the Government sets forth its formal response to defendant's requests below. For the convenience of the Court, the Government's responses correspond in number to defendant's requests.

Requests for a Bill of Particulars

(1.) Defendant asks for the identity of the "confidential source" mentioned in paragraph 3 of the complaint, pursuant to which defendant was arrested. A copy of said complaint is annexed hereto as Exhibit A. The Government opposes this request on the grounds that the identity of the "confidential source" taken in the context in which the term appears in paragraph 3 is irrelevant to any issue which defendant might plausibly seek to raise. In addition, the Government opposes this request on the ground that the information is privileged and that defendant has made no showing which would necessitate the lifting of the privilege.

(2.a - 2.c.) The Government will provide defendant with the information requested in paragraph 2b. if and when Simon is called as a Government witness. These requests are otherwise opposed as being the improper subject of a Bill of Particulars.

(3.-7.) These requests are opposed as being the improper subject of a Bill of Particulars.

(8.) The Government has already provided defendant with copies of all statements he made to various state and federal officials. To the extent defendant's request goes beyond this, it is opposed as being the improper subject of a Bill of Particulars.

(9.) Consented to.

(10.) Consented to as the names; opposed as to addresses.

(11.-13.) These requests are opposed as being the improper subject of a Bill of Particulars.

(14.) Consented to.

(14a.-14c.) These requests are opposed as being the improper subject of a Bill of Particulars.

(15.-17a.) Consented to.

(18.-20) These requests are opposed as being the improper subject of a Bill of Particulars.

(21.-21a.) Consented to.

(22.-24.) These requests are opposed as being the improper subject of a Bill of Particulars.

Request for Discovery

(1.-3.) Consented to.

(4.) This request is opposed as exceeding the proper limits of discovery.

(5.) The Government has no opposition to any statements of record made by Campbell at the time of his

WANTED

13-0800

DRAFTED

JNB:LM

73-0800

plea or sentence being transcribed for the use of the defendant ^{WILLIAMSON} Leathers. To the degree defendant's request goes beyond this, it is opposed as exceeding the proper limits of discovery.

(6.) Consented to.

(7.) This request is opposed as exceeding the proper limits of discovery.

(8.) This request is opposed on the grounds that defendant has failed to meet in any fashion the burden thrust on him by Rule 6(e), Fed. R. Crim. P.

(9.) All four men have been charged for their participation in the crime covered by said complaint. The relevant cases, all pending before this Court, are as follows: Campbell (73 Cr. 1132); Williamson (74 Cr. 579); Simon (74 Cr. 618); and Leathers (74 Cr. 805).

(10) This request is opposed on the grounds that it refers to a prior trial in which Williamson was not a defendant and in which the crimes charged were entirely different from the ones covered by the indictment in this case. As a result, even if a witness in that case is also called in the trial of Williamson, his or her earlier testimony could not be relevant to the instant proceedings. In addition, the Government does not have in its possession the transcript of the testimony of any witness in this earlier trial which defendant apparently seeks and believes that in fact the testimony in question has not been

Alma Williamson

I5

73-0800

73-0800

transcribed as of this date.


JOHN N. BUSH
Assistant United States
Attorney

Sworn to before me this
25th day of October, 1974.

Alma Hanson
Notary Public

ALMA HANSON
NOTARY PUBLIC, State of New York
No. 24-6763450 Qualifed in Kings Co.
Certificate filed in New York County
Commission Expires March 30, 1976

I₆

Da

*Front
4*

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----X
UNITED STATES OF AMERICA

-against-

LARRY WILLIAMSON,

Defendant.

74 CR. 579
(I.B.C.)

MEMORANDUM

NY 6 9 31 AM '74
S.D. OF N.Y.
U.S. DISTRICT COURT

-----X
IRVING BEN COOPER, D. J.

#41400

Defendant was named in a four-count indictment filed June 6, 1974, charging him with conspiracy, assault and the robbery of a United States Post Office in the Bronx. 18 U.S.C. §§2, 371, 1708, 2114. Defendant now moves for various forms of relief. We dispose of defendant's motion as follows:

I. BILL OF PARTICULARS

Defendant moves under Rule 7(f), Fed.R.Crim.P. for a bill of particulars. Items 2(b), 8, 9-10, 14, 15-17(a), 21, 21(a) are granted to the extent consented to by the Government.

Items 2(a), 2(e), 3-7, 11-13, 14(a)-14(e), 18-20, 22-24 are denied. These are requests for evidentiary matter and the Government's legal theory and are beyond

MICROFILM

NOV 4 1974

(14)

J.

F

the scope of a bill of particulars. United States v. Copen, 378 F.Supp. 99, 103 (S.D.N.Y. 1974); United States v. Politi, 334 F.Supp. 1318 (S.D.N.Y. 1971).

Item 1 is denied. It requests the name of the confidential source mentioned in paragraph three of the pre-indictment complaint. Particularly where the defendant absolutely fails to demonstrate the relevancy of the informant's identity to the defendant's case, the Government's privilege should not be lifted. Rovaire v. United States, 353 U.S. 53, 59-62 (1957); United States v. Sales, 482 F.2d 105, 108 (2d Cir. 1973).

II. DISCOVERY AND INSPECTION

Defendant moves for an order pursuant to Rule 16, Fed.R.Crim.P., requiring the Government to produce for discovery and inspection ten separate items.

Items 1-3, 6 and 9 are granted to the extent consented to by the Government. Item 4 is granted in accordance with our disposition at Part VI., infra of similar requests.

Item 7 is denied. Item 8 is denied in accordance with our disposition at Part III., infra of similar requests.

(17)

Item 5 of this part seeks a copy of co-conspirator Campbell's sentencing minutes and "a copy of any statements made by him in regard to the alleged events either at plea or at any time." The Government responds that it has "no opposition to any statements of record made by Campbell at the time of his plea or sentence being transcribed for the use of defendant Leathers [sic Williamson]." With this slight correction we grant Item 5 to the extent consented to by the Government.

Item 10 requests the transcript of a trial, involving co-conspirator Campbell, which was recently held in New York State Supreme Court, Bronx County. Williamson claims that this transcript is "3500 material" or "Brady material" because certain witnesses that testified in the Bronx trial against Campbell may testify for the Government in this trial against defendant. The Government basically contends that the witnesses' testimony at the Bronx trial is irrelevant to the criminal proceedings here, and that, in effect, the transcript does not fall within the ambit of Brady v. Maryland, 373 U.S. 83 (1963). Moreover, since the transcript of the Bronx trial is a matter of public record, it does not come within the scope of 18 U.S.C. § 3500. Accordingly, since we reject both of defendant's contentions in this request, Item 10 is denied.

III. INSPECTION OF GRAND JURY MINUTES

Part three of defendant's omnibus motion seeks an order "granting to the defendant inspection of the Grand Jury minutes with regard to the instant indictment." Defendant has totally failed to meet the burden placed upon him by Rule 6(e), Fed.R.Crim.P. A blanket request for pretrial inspection of grand jury minutes will be denied in the absence of any showing of a particularized need. United States v. Gardner, 308 F.Supp. 423, 428 (S.D.N.Y. 1969); see also, United States v. Copen, supra, 378 F.Supp. at 102. Accordingly, this application is denied.

IV. SUPPRESSION OF IDENTIFICATION OF DEFENDANT WILLIAMSON

In part four of his motion, defendant applies for an order "suppressing any and all identification of [defendant] LARRY WILLIAMSON made by one Douglas Simon in that said identification is unconstitutional and illegal." The use of a spread of photographs in the course of the prosecution's investigation of a crime for the purpose of identifying a probable perpetrator of that crime is not inherently unconstitutional. Simmons v. United States, 390 U.S. 377, 384 (1958). Additionally, defendant has alleged no basis in fact for his attack on the procedures

employed here. The Court is not required to conduct a suppression hearing in circumstances when defendant's moving papers are general, conclusory and conjectural. United States v. Culotta, 413 F.2d 1343, 1345 (2d Cir. 1969). The motion to suppress is denied with leave to renew at the time of trial if appropriate.

V. PRODUCTION OF GOVERNMENT WITNESSES
FOR INTERVIEW BY DEFENDANT'S COUNSEL

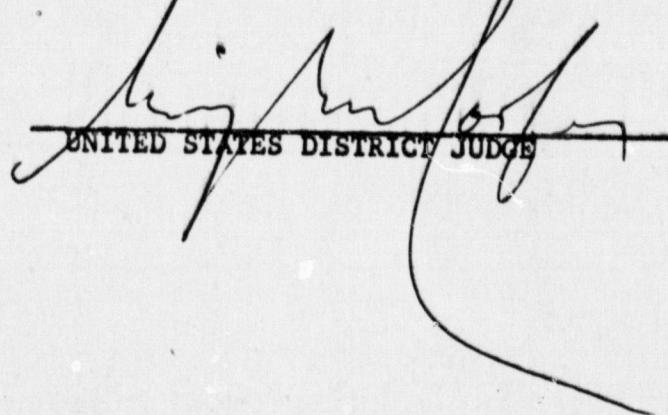
In part five of his motion, defendant seeks an order directing the Government "to bring all witnesses presently incarcerated to the United States Courthouse for the Southern District of New York prior to trial for interviewing by defense counsel herein." This request is denied. United States v. Marshak, 364 F.Supp. 1005, 1007 (S.D.N.Y. 1973); United States v. Hasiwar, 299 F.Supp. 1053 (S.D.N.Y. 1969).

VI. MATERIAL FOR USE IN CROSS-EXAMINATION
OF GOVERNMENT WITNESSES

In part six of his motion, defendant asks for an order directing the Government to inform defense counsel whether any prospective witness has been granted immunity from prosecution or leniency by the Government. The Government's response is satisfactory.

SO ORDERED:

New York, N.Y.
November 5, 1974


UNITED STATES DISTRICT JUDGE

JUDGMENT AND PROBATION/COMMITMENT ORDER

In the presence of the attorney for the government
the defendant appeared in person on this date

MONTH
12DAY
19

COUNSEL

 WITHOUT COUNSEL

However the court advised defendant of right to counsel and asked whether defendant desired to have counsel appointed by the court and the defendant thereupon waived assistance of counsel.

 WITH COUNSEL

STUART R. SHAW, Esq., Counsel

(Name of counsel)

PLEA

GUILTY, and the court being satisfied that
there is a factual basis for the plea,

 NOLO CONTENDERE, NOT GUILTY

NOT GUILTY. Defendant is discharged

There being a #/#/#/#/verdict of

GUILTY.

FINDINGS &
ASSESSMENT

Defendant has been convicted as charged of the offense(s) of unlawfully, wilfully and knowingly combined, conspired, conferred and agreed together and with others to violate Sections 1708 and 2114 of Title 18, U.S. Code, unlawfully, wilfully and knowingly would, with intent to rob, steal and purloin mail matter, money and other property of the United States, assault and use of dangerous weapons put in jeopardy the lives of persons lawfully charge, control and custody of such mail matter, money and property of the U.S.A. Section 371 and 2114 and 2.

The court asked whether defendant had anything to say why judgment should not be pronounced. Because no sufficient cause was shown, or appeared to the court, the court adjudged the defendant guilty as charged and convicted and ordered that the defendant be hereby committed to the custody of the Attorney General or his authorized representative under the provisions of Section 4208 (b) of Title 18, U.S. Code for study, report and recommendations as described in Section 4208 (c). This commitment is deemed to be for the maximum sentence provided under law for counts 1 thru 4 inclusive, to run consecutively unless altered pursuant to Section 4208 (b) of Title 18, U.S. Code upon receipt of report and recommendation. The recommendations which the director of prisons believes would be helpful in determining the deposition of this case shall be furnished to the court within THREE (3) MONTHS.

Defendant is remanded.

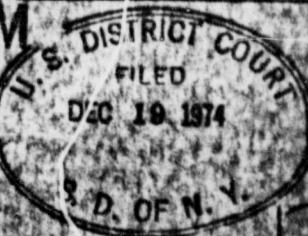
In addition to the special conditions of probation imposed above, it is hereby ordered that the general conditions of probation set out on the reverse side of this judgment be imposed. The Court may change the conditions of probation, reduce or extend the period of probation, and at any time during the probation period or within a maximum probation period of five years permitted by law, may issue a warrant and take probation for a violation occurring during the probation period.

The court orders commitment to the custody of the Attorney General and recommends:

It is ordered that the Clerk deliver a certified copy of this judgment and commitment to the U.S. Marshal or other qualified officer.

MICROFILM

DEC 20 1974



Case No. 12-19-74

ON FILE, AVAILABLE

SEARCHED

INDEXED

SERIALIZED

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK, D. OF N.Y.

DEC 27 1974

RECEIVED
PAUL J. CURRAN
Dec 27 1974
U.S. ATTORNEY
FOR THE SOUTHERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA,

-against-

LARRY WILLIAMSON,

Defendant-Appellant.

NOTICE OF APPEAL

174 Cr. 579 (TWC)

PLEASE TAKE NOTICE, that the above named defendant hereby appeals to the United States Court of Appeals for the Second Circuit from the conviction and sentence of the United States District Court, Southern District of New York, by a Court (Cooper, J.) and a jury, entered in the office of the Clerk of said Court on December 19, 1974 and from each and every part thereof.

Dated: New York, New York

20th day of December, 1974

Respectfully submitted,

Stuart R. Seward
STUART R. SAWARD, ESQ.
Attorney for Defendant
233 Broadway
New York, New York 10007
(212) BE 3-8991

TO: Clerk
United States Court of Appeals
for the Second Circuit
United States Courthouse
 Foley Square
New York, New York 10007

United States Attorney
Southern District New York
United States Courthouse
Foley Square
New York, New York 10007

Attn: John H. Bush, Esq.

DET.
WARDEN
427 West St.
N.Y.C.

ISSUED 12/27/74
INSTR (212) 579

18

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----x
UNITED STATES OF AMERICA,

74 Cr. 579

-against-

LARRY WILLIAMSON,

Judge Irving Ben Cooper

Defendant.

CLERK'S CERTIFICATE

-----x
I, RAYMOND F. BURGHARDT, Clerk of the District Court of the United States for the Southern District of New York, do hereby certify that the certified copy of docket entries lettered A-C, and the original filed papers numbered 1 through 19, inclusive, constitute the record on appeal in the above entitled proceeding; except for the following missing documents:

Date Filed:

PROCEEDINGS

10-15-74

Government's Notice of Readiness
for trial.

IN TESTIMONY WHEREOF, I have caused the seal of the said Court to be hereunto affixed, at the City of New York, in the Southern District of New York this _____ day of _____, in the year of our Lord, One Thousand nine hundred and seventy five, and of the Independence of the United States the 199 year.

Clerk of the Court.

M

EXHIBIT
U. S. DIST. COURT
S. D. OF N. Y.

3501 10

NOV 12

NY 6-151604X 117 & 0-12 of a two page statement

to the New York

Say I am a witness having been duly sworn and
that all my constitutional rights deposed and state
the following:

In the summer of 1972, I was approached by
Bruce Campbell, Bruce Leathers, Lancy. We in a car
met at the Cozy Corner Bar, Commonwealth &
Randall Ave. They asked me if I wanted to
rob some money. I was told it was a Post
Office we were going to rob, they said the
money would be on the truck. We said right
away first it would be a four way split.

The day the job went down Campbell, Leathers and
Lancy picked me up on the corner of Randall Ave.
He had a .45 driving what I thought was a rented
truck; we went to the Post Office. I reached
under the seat and got a 38 pistol. Bruce & I
got out of the car and walked to the post office
on the parking lot. Bruce went up on the platform
& I went between two trucks and up on the plat-
form and held my gun on the guard & took his
pistol from him! Bruce held the rest of the people
while the guard & myself opened the truck;
it was time Bruce put the people in the truck
& said the bags with the money had been
taken. He handed me one bag & he took over. I
tried to walk away, he closed the truck with

D. P. 100

ONLY COPY AVAILABLE

Page two

people inside. I went down the block but
car was moved, so I walked to the next corner
about a minute the car pulled up and I got
in. We went to a house on 174st and split the
money, about \$10,000 or \$11,000. With me were Rother,
Lee & Laney. Bruce & I left and took a cab back
to our view, we left the guns on the table. We did
not take any checks only money. One of the guns
left on the table belonged to the P.C. Guard.
I had to cut the bags open with a knife or scissor
of the straps.

The man who seemed to be running the show was
then Campbell.

I have given this statement freely & without
any threats or promises being made to me.

Dauglin Senior
11-50-73 2:55 P.M.

worn and unable to
fire me on this the 5th
of November, 1973

R. Kivit
Postal Inspector

Witnessed by
Elmer H. Kearny Special Investigator
Edmund J. Postal Inspector

No.

WANTED

REWARD \$3,000

FOR INFORMATION LEADING TO THE ARREST AND CONVICTION OF EACH SUSPECT



Male, Black, Slim build, Dark complexion, 5'9"-5'10" tall, approx. mid-twenties, unshaven, wearing denim hat, armed with small calibre automatic pistol.



Male, Black, Slim build, medium to dark complexion, 6'0"-6'1" tall approx. mid-twenties, wearing old style Post Office jacket with round emblem, denim hat, armed with small calibre automatic pistol.

On Friday, June 16, 1972, at approx. 6:30 PM, these two suspects committed an armed robbery of Boulevard Station, 1132 Southern Boulevard, Bronx, N.Y. One employee was injured and hospitalized. Suspects are believed to have used a white, 1964 Oldsmobile as a get-away car. Anyone having information as to the identity of these men or of the actual robbery, should contact the following departments.

POSTAL INSPECTORS

971-7844

7845

8TH ROBBERY SQUAD, N.Y.P.D. 828-5915

NO ARRESTS WARRANTS HAVE BEEN ISSUED

DEFENDANT'S

EXHIBIT

U.S. DIST. COURT
S.D. OF N.Y.

NOV 12

B

D

O

DEFENDANT'S

EXHIBIT

ent or Object

Cr. Form No. 21 (Rev. 5-68)

U. S. DIST. COURT

S. D. OF N. Y.

NOV 13

United States District Court
FOR THE

Southern District of New York

ID

AMERICA

No.

74 Cr. 579

Larry Williamson



To
13
Postmaster 1132 South Bronx Blvd.
Boulevard Station Post Office
Bronx, New York

RECEIVED
NOV 14 1974

Personnel
Bronx, NY 10457

You are hereby commanded to appear in the United States District Court for the **Southern**

District of New York at Foley Square in the city of
before the Hon. Irving Ben Cooper, Courtroom 102
New York on the 14th day of November 19 74 at 9:00 o'clock A.M.

to testify in the case of United States v. **Larry Williamson** and bring with you
any and all records presently in your possession or in the
possession of any other branch of the United States Post Office
relating to the employment of one Larry Williamson at the
Boulevard Station Post Office, Bronx, New York including but
not limited to the following: time records, payment receipts,
salary records, etc.

This subpoena is issued upon application of the defendant

Nov. 12 , 19 74

RAYMOND F. BURGHARDT

Stuart R. Shaw

Clerk.

Attorney for Defendant

B. EDWARDS

223 Broadway, N.Y. 1

Deputy Clerk.

Address

¹ Insert "United States," or "defendant" as the case may be.

RETURN

Received this subpoena at _____ on _____
and on _____ at _____
served it on the within named _____
by delivering a copy to _____ and tendering to _____ the fee for one day's attendance and the mileage allowed by law.²

Dated:

, 19 _____

By _____

Service Fees

Travel _____ \$ _____
Services _____

Total _____ \$ _____

² Fees and mileage need not be tendered to the witness upon service of a subpoena issued in behalf of the United States or an officer or agency thereof. 28 USC 1825, or on behalf of a defendant who is financially unable to pay such costs (Rule 17(b), Federal Rules Criminal Procedure).

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

EXHIBIT NO. 1-*MTC*
JUN 6 1974
U. S. GRAND JURY
S. D. N. Y.

-----x
:
UNITED STATES OF AMERICA :
-against- :
DOUGLAS SIMON :
:
-----x

United States Courthouse
Foley Square
New York, N. Y. 10007

November 7, 1973
3:00 p.m.

APPEARANCES:

JOHN N. BUSH, ESQ.

Assistant District Attorney

Daniel Fox
Acting Grand Jury Reporter

1 11/7/73 2

2 DOUGLAS SIMON, having been duly sworn by the Foreman,
3 was examined and testified as follows:

EXAMINATION BY MR. BUSH:

5 Q Would you state your full name?

6 A Douglas Fairbanks Simon.

7 Q And spell it?

8 A D-o-u-g-l-a-s, F-a-i-r-b-a-n-k-s, S-i-m-o-n.

9 Q Where do you reside?

10 A 3023 Michael Avenue.

11 Q Mr. Simon, let me advise you that you
12 are one of the possible targets of the investigation
13 being conducted by this Grand Jury.

14 By that I simply mean that from its investigation
15 this Grand Jury may decide to indict you for a crime
16 relating to a post office robbery together with
17 whatever other individuals they believe were involved
18 in the robbery or they may believe none of you were
19 involved in the robbery, do you understand that?

20 A Right.

21 Q I advise you further that you don't have
22 to make statement here today, do you understand that?

23 A Yes, sir.

24 Q In addition, I advise you that if you choose
25 to make a statement here that whatever statement you

1

Simon - 11/7/73

3

2

might make can be used against you in any subsequent proceeding, do you understand that?

4

A Yes.

5

Q Furthermore, you should know that you have the right to consult with an attorney about these proceedings. While you don't have the right to have an attorney here within this room at this point in time, you do have the right to consult with him and to have that attorney wait outside the door here so that you may talk to him if you desire, do you understand that?

12

A Yes.

14

Q And finally, I advise you that if you do not have sufficient funds to retain your own attorney then the government would appoint an attorney for you at no expense, do you understand that?

18

A Right.

19

Q Now understanding your rights as I have explained them to you here, I understand that you are willing to testify here today, is that correct?

22

A Yes.

23

Q Furthermore, I understand you are willing to so testify without counsel, is that right?

25

A Right.

1 Simon - 11/7/73

4

2 Q Now, one last thing I should advise you
3 that if you testify falsely before this Grand Jury,
4 you may very well have committed a separate and
5 independent federal crime, that of perjury, quite apart
6 from the postal robbery, do you understand that?

7 A Yes.

8 Q Now I turn your attention to the summer
9 of 1972 and more particularly June of that year and
10 ask you if you were involved in the robbery of a postal
11 truck, I guess it was, which was then located at the
12 Boulevard Postal Station in the Bronx?

13 A Yes, I was.

14 Q And I ask you if the other individuals who
15 are involved in this robbery were one Arthur Campbell, and
16 Bruce Leathers?

17 A Yes.

18 Q And finally, a third individual whom you know
19 as Larry, would that be correct?

20 A Right.

21 Q Do you know Larry's last name at this point
22 in time?

23 A No, I don't.

24 Q Would you describe what Larry looks like to
25 the members of the Grand Jury?

1 || Simon - 11/7/73

5

A Light skin, about my complexion, I guess
about almost six feet.

Q Is he light?

5 A Yes, my complexion or lighter.

6 Q Well let me clarify it for the record. The
7 record doesn't reflect that you are a black individual,
8 so I take it the fellow named Larry would be a black
9 individual with light complexion. That he is a
10 relatively tall individual somewhere in the neighborhood
11 of six feet?

12 A Right.

Q And what type of build does he have?

A Medium build.

15 Q Now, were you first approached concerning
16 this robbery in front of the Cozy Corner Bar in the
17 Bronx?

18 A Right.

Q And who was in this car at the time that
you approached concerning the robbery?

A Arthur, Bruce, and Larry.

Q And did they ask you if you wanted to make
some money?

A Yes, right.

Q And did they tell you that in this connection

Bruce fastig before

1 Simon - 11/7/73

6

2 they had planned to rob a post office where they said
3 there would be money on a truck?

A Yes.

5 Q Now, on the day when this robbery took
6 place, did the three other men pick you up at the corner
7 of Randal Avenue in the Bronx?

A Yes, right.

9 Q And was Arthur, at that time, driving?

10 A Yes, he was.

11 Q Did he then drive to the post office?

12 A Yes.

13 Q And once you arrived at the post office did
14 you take a 38 caliber pistol from the car to use in the
15 robbery?

16 A Yes.

17 Q Was anyone else armed at that time?

18 A Bruce.

19 Q What type of weapon did he have?

20 A I believe it was a 38 revolver, too.

21 Q Now, did the two of you then proceed into
22 the post office area?

23 A Yes, we did. I believe Larry was there too
24 but I don't remember to tell you the truth.

25 Q You don't recall if Larry went in with you

1

Simon - 11/7/73

7

2

at that time?

2

A He came out behind me.

1

Q But you didn't actually see him in the post office area subsequently he was in the car with you and departed to come into the post office area with you and Arthur was driving?

1

A Yes, sir.

4

Q So what you remember now is that you and
Bruce Leather were in the post office area?

1

A Yes, the platform.

1

Q And once you arrived there what did you do?

1

A I took the pistol from the guard and told everybody to hold still, nobody move. We got the keys from the guard, rather, I walked him to the truck, he opened the truck.

1

Q And by truck you mean one of the post office trucks?

5

A Yes. Post office truck.

1

Q And then what did you do?

A All the employees went into the truck, Bruce took a bag and gave me a bag. I left him in the truck; as he was coming out he closed the truck.

Q Roughly how many post office employees did you lock in the truck?

Simon - 11/7/73

8

A Four or five, I don't remember.

Q And how many bags did you take?

A (Two.)

Q How did you know which bags had the money
em?

A Well they handed it to me. I didn't know,
knew, I guess.

Q And once you had gotten the bags what did you do?

11 A I walked to the corner where the car was
12 supposed to have been and it wasn't there and I went
13 around the corner and I stood on the next street and
14 as I was standing there the car came from around the
corner.

Q And was Bruce on the corner with you?

A No, I was by myself.

O Where did he go?

A He was behind me, I don't know what happened to him.

O Did you have the bags or did he?

A We both had one.

Q Did you both end up in the car?

A Yes.

9 So after the robbery occurred you ended up

Simon - 11/7/73

9

with Bruce and the bags in the car?

A Yes.

Q At the time you got back to the car were all of you in the car?

A Yes.

Q Where did the four of you then go?

A 174 Street in the Bronx.

O Was that in the Bronx?

A Yes.

Q Was that in an apartment in the Bronx?

A Yes.

Q And once you got into the apartment what did you do?

A Cut the bags up, took the money out and counted it.

Q How much money was there?

A \$10,000 or \$11,000.

Q And following the time you counted the
money what if anything did you do with the money?

A We split it four ways and I left. Bruce and
I both left.

Q So each one of you took an equal share from this amount of money, would that be correct?

A Yes.

Simon - 11/7/73

10

Q Whose apartment was this that you had gone
to?

A I couldn't tell you.

Q What did you do if anything with the gun
that you had taken from the post office guard?

A I left it on the table at the apartment.

O At the apartment?

A Yes.

Q Where you counted the money and split it?

A Yes.

Q I would ask this single-paged document be marked as Grand Jury Exhibit 1 and that this two-paged document be marked as Grand Jury Exhibit 2?

(So marked Exhibits 1 and 2.)

Q Prior to coming here today, Mr. Simon,
I take it you were interviewed by a postal inspector?

A That's correct.

Q And did this post office inspector advise you of your constitutional rights as much as I did prior to speaking to you before this Grand Jury?

A Yes, he did.

Q Did he tell you that you had the right to refuse to answer any question which he might ask you?

Yes

1 Simon - 11/7/73

11

2 Q Did he advise you that you should understand
3 that anything you might say could be used against you?

4 A Yes.

5 Q Did he furthermore advise you, that you have
6 the right to talk with an attorney before he asked you
7 any questions and that you could have the attorney with
8 you during questioning?

9 A Yes, he did.

10 Q And did he say to you that an attorney would
11 be appointed if you could not afford it?

12 A Right.

13 Q And I believe if you wanted to stop
14 answering questions he said that you could stop
15 answering questions if you so desired?

16 A Yes, he did.

17 Q At the time roughly that this was going on
18 did he show you a form with your rights printed on it?

19 A Yes.

20 Q Did you read that form?

21 A Yes, I did.

22 Q And did you fully understand what those
23 rights were?

24 A Yes.

25 Q Now, did you sign that form?

1 Simon - 11/7/73

2 A Yes, this is my signature.

3 Q And is this the form that has been marked
4 as Grand Jury Exhibit 1?

5 A Yes, it is.

6 Q Now following the point when you were
7 advised of your rights, did you make a statement
8 concerning this robbery to the postal official?

9 A Yes, I did.

10 Q And was this statement reduced to writing?

11 A Yes, it was.

12 Q And did you sign that statement?

13 A Yes, I did.

14 Q I show you what has been marked here as
15 Grand Jury Exhibit 2 and ask you if that is the statement
16 which you made?

17 A Yes, it is.

18 Q Let me just return to one point, when you
19 went in and robbed this money from the post office did
20 both you and Bruce have your pistols clearly in view?

21 A You mean, were they both out?

22 Q Yes. Were they in your hands?

23 A Mine was, I don't remember about Bruce.

24 Q I take it when the keys were taken from this
25 postal guard together with his pistol that this was done

Simon - 11/7/73

13

2 by virtue of the fact that you had a pistol on you?

3 A Yes.

MR. BUSH: Mr. Foreman, I would ask

5 that you have Mr. Simon step outside for the
6 time being, so I can ask the Grand Jury if they
7 have any questions that they want me to put to
8 him?

THE FOREMAN: Would you step outside,

16 | please.

(Witness leaves and returns.)

12 THE FOREMAN: You realize you are
13 still under oath?

THE WITNESS: Yes.

15 Q There were several questions, Mr. Simon,
16 that members of the Grand Jury would like me to direct
17 to you so let's do so.

To begin with, did you have a license for the
pistol that you used in this robbery?

A No.

Q To your knowledge did Bruce Leather have a
21 license for the pistol which he used?

A No.

Q Were these pistols loaded at the time of the
robbery? → How does he know this

P

1 Simon - 11/7/73

14

2 A Yes.

3 Q Now, when you say the guard, I take it
4 you mean an individual you call a guard because he
5 had a pistol on him that you could see?

6 A Yes.

7 Q Now was it this individual that had the
8 keys to the truck?

9 A Yes, he did.

10 Q Or key to the truck?

11 A Yes.

12 MR. BUSH: I have no further
13 questions of this witness.

14 (Time noted: 4:00 p.m.)

15

16

17

18

19

20

21

22

23

24

25